M.R.O. 1—30,000—16-10-39.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No.	1216	Press Mis.
137-39		
Dated	21-9-	19 1860

313

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
21*st September* 1860.

Read the following papers:—

No. 137 From A. HATHAWAY, Esq., Magistrate of Bellary, to T. PYCROFT, Esq., Chief Secretary to Government, Judicial Department, Fort Saint George, dated Bellary, 1st September 1860, No. 89.

I have the honor to request the instructions of Government, as to the course I am justified in adopting, when a Roman Catholic Priest refuses to give up a child, that may formerly have been entrusted to his charge by one of the parents, although both the mother (Eurasian) and the putative father (a European Soldier) called upon me, in my capacity of Justice of the Peace, to enforce its rendition.

2. I am not aware that the Habeas Corpus Act is operative beyond the jurisdiction of the Supreme Court, and I can find no precedents to guide me.

Referred to the Government Solicitor for the opinion of the Advocate General.

(Signed) T. PYCROFT,
Chief Secretary.

FORT SAINT GEORGE,
5th September 1860.

No. 138. From J. R. BOYSON, Esq., Government Solicitor, Madras, to the Chief Secretary to Government, Madras, dated September 14th, 1860, No. 862.

Order, dated 5th September 1860, *on Letter from the Magistrate of Bellary to Government of the 1st idem, No. 89.*

1. I have the honor to acknowledge the Order of Government, noted in the margin.

2. I submitted it for the consideration of the Advocate General, and have since conferred with him on the subject to which it relates, and,

3. I now forward a copy of his opinion.

COPY—OPINION.

It appears to me that there are two courses open to the parties concerned in this case. Firstly, the child's mother can make an Affidavit on which the Supreme Court can be moved to issue a Writ of Habeas Corpus to the Priest, both he and the child being, I collect, British subjects. This course would probably involve the issuing of a Commission from the Supreme Court, directed to the Magistrate authorizing him to swear the mother and putative father to such an Affidavit at Bellary—as, I presume, she could not come down to Madras herself to swear it here. This would be the more expensive course, but it would be a good lesson to the Priest, if the objection of expense be got over.

Secondly, the Magistrate, on the parents' complaint that the child is detained from them by the Priest against their will (if they can say "*forcibly detained*" so much the better) can issue his Summons (and Warrant if the Summons be not obeyed) for the Priest's attendance, and a Subpœna for the child to *attend and give evidence as a Witness* (of course to prove the charge) and when he has both parties before him, tell the mother to take the child, and the child, if above 7, that it may go where it pleases. If the Priest resists, and lays hold of the child, the Magistrate may deal with him as for an assault and a contempt of Court, if the Priest does so in the Magistrate's Court, or for illegal abduction, if elsewhere.

September 12th, 1860.

(Signed) THOS. SYDNEY SMYTH,
Advocate General.

(True Copy,)

(Signed) J. R. BOYSON,
Government Solicitor.

No. 139. ORDER THEREON, 21st September 1860, No. 1,216.

The opinion of the Advocate General, received through the Government Solicitor, will be communicated to the Magistrate of Bellary, in reference to his letter, 1st instant, No. 89.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

Judicial.

Proceedings of the Madras Govt.

Read the following letters—

From the Magistrate of Bellary — Date 1st Sept. '60 No. 39.
" the Govt. Solicitor — 14th do — No. 862.

Order. 21st September 1860. No. 1216.

Wh — The opinion of the Advocate General received thro' the Govt. Solicitor, will be communicated to the Magistrate of Bellary, in preference to his letter, 1st Inst. No. 39.

Wh

To the Magistrate of Bellary. Sept 22d

